



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

February 22, 2008

Mr. William Steelman  
162 Garret Lane  
Unicoi, Tennessee 37692-4042

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT #7006 0810 0000 1061 7214**

Subject: DIRECTOR'S ORDER NO. WPC08-0020  
STEELMAN PROPERTY  
UNICOI COUNTY, TENNESSEE

Dear Mr. Steelman:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Mark Jordan at (615) 532-0675.

Sincerely,



Patrick N. Parker, Manager  
Enforcement and Compliance Section

PNP:MAJ

cc: DWPC – EFO-Memphis  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>WILLIAM STEELMAN</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
<b>RESPONDENT</b>	)	
	)	<b>CASE NUMBER WPC08-0020</b>

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

**II.**

William Steelman (hereinafter the "Respondent") is a resident of the State of Tennessee and is the owner of property located at 162 Garret Lane in Unicoi County (hereinafter the "site"). Service of process may be made on the Respondent at 162 Garret Lane, Unicoi, Tennessee 37692.

**JURISDICTION**

**III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred,

or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

#### IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

#### V.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

#### VI.

The unnamed tributary to North Indian Creek and an unnamed wetland, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control

Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

## **FACTS**

### **VII.**

On July 23, 2007, division personnel from the Johnson City Environmental Field Office (JCEFO), conducted site inspection and noted that construction activities had resulted in approximately 80 LF of an unnamed tributary/wetland system to Indian Creek being altered by constructing a ditch and directing spring flow that fed the wetland into a culvert placed into the ditch. Division personnel spoke with the Respondent and determined that flow from the spring had been absent prior to the recent construction activities associated with the removal of the existing springhouse.

### **VIII.**

On August 15, 2007, the division issued a Notice of Violation (NOV) to the Respondent for the violations noted during the July 23, 2007, site inspection. The Respondent was instructed to return the unnamed tributary/wetland area to its original condition by removing the culvert, filling the ditch the culvert had been placed in and re-vegetate the affected area.

### **IX.**

On August 21, 2007, the Respondent requested a meeting at the JCEFO to discuss site conditions and compliance options.

## **X.**

On September 6, 2007, the Respondent and division personnel met at the JCEFO to discuss site conditions and compliance options. The Respondent stated that the construction activities conducted to that date were an attempt to protect the foundations of the residence located on the site and maintain the effectiveness of the existing septic sewer system by encapsulating the spring flow, and to improve the site by removing an abandoned underground oil storage tank and leveling and re-grading the lot. The Respondent further stated that the wetland area had been created by these activities. Division personnel determined the length of the encapsulated segment to be approximately 137 linear feet (LF).

## **XI.**

On September 13, 2007, the division sent correspondence to the Respondent documenting the findings of the September 6, 2007, meeting. The Respondent was instructed to provide a Corrective Action Plan (CAP) detailing the necessity of retaining the entire encapsulated stream length of 137 LF and to provide a mitigation plan for loss of this stream from one of the following alternatives:

- Contribute to the Tennessee Stream Mitigation Bank
- Improve an existing stream on other property owned by the Respondent
- Relocate the encapsulated stream channel

The Respondent was again instructed to return the wetland area to its original condition and to submit the CAP within 30 days.

## **XII.**

On October 30, 2007, division personnel returned to the site to determine compliance with the August 15, 2007, NOV and September 13, 2007, correspondence. Division personnel noted that an additional ditch had been constructed across the site leading away from the original unnamed tributary/wetland area and instructed the Respondent to fill the ditch.

## **XIII.**

On November 11, 2007, division personnel met with the Respondent and again emphasized the need for the submittal of a CAP and discussed possible enforcement actions.

## **XIV.**

On December 12, 2007, the Respondent submitted a CAP to the JCEFO. The Respondent proposed the relocation of the existing stream/wetland system into the rear of the property, away from the existing structure and septic field. The CAP indicated that the total stream length from the relocation would be approximately 200 LF with plantings of appropriate native vegetation. The CAP also proposed a minor road crossing of the relocated channel 20 LF in width to provide for adequate site access.

## **VIOLATIONS**

## **XVI.**

By altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

### **ORDER AND ASSESSMENT**

#### **XVII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, implement the activities in the December 12, 2007, CAP, including the planting of the native vegetation and no other ARAP permits will be required. The Respondent shall submit notification to the division at the time the CAP is initiated. This notification shall be submitted to the Water Pollution Control Manager in the JCEFO at 2305 Silverdale Road, Johnson City, Tennessee 37601
2. The Respondent shall, within 120 days of initiation, complete the activities outlined in the CAP and submit notification of the completion of these activities to the JCEFO at the address shown in Item 1.
3. The Respondent shall pay a CIVIL PENALTY of FIVE THOUSAND DOLLARS (\$5,000.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00).
  - b. If the Respondent fails to comply with Part XVII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
  - c. If the Respondent fails to comply with Part XVII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.



The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

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Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243.